

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-216731

**DATE:** November 19, 1984

**MATTER OF:** Nello Construction Company

**DIGEST:**

Bidder which certifies that it is not a small business was eligible for award of the contract under an invitation for bids not set aside for small business.

Nello Construction Company (Nello) protests award of a contract to Jendoco Construction Company (Jendoco) under invitation for bids (IFB) No. K0348078, issued by the Bureau of Mines, Department of the Interior (Interior).

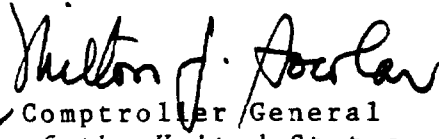
We deny the protest without obtaining a report from the contracting agency, in accordance with section 21.3(g) of our Bid Protest Procedures, 4 C.F.R. § 21 (1984).

Nello contends that Jendoco, the low bidder, is ineligible for award "as a small business concern under section "K," "Representations, Certifications and other Statements of Offerors or Quoters" of the IFB. In section "K" of its bid, Jendoco certified that it was not a small business.

In response to a protest previously filed by Nello with Interior involving this same allegation, the contracting officer held that since the solicitation was not set aside solely for small business concerns, the certification by Jendoco as a large business did not render Jendoco ineligible for award. The contracting officer also stated that the purpose of the "Small Business Size Standard" in a solicitation which is not set aside for small business concerns is to inform all bidders of the criteria for size determination for the proper execution of the small business size certification. The certification is important for proper application of the equal bid provision of the Federal Acquisition Regulation (FAR) § 14.407-6, 48 Fed. Reg. 42,102, 42,183 (1983) (to be codified at 48 C.F.R. § 14.407-6), and for implementation of the Small Business and Small Disadvantaged Business Subcontracting Plan required by FAR § 52.219-9, 48 Fed. Reg. 42,102, 42,523 (1983) (to be codified at 48 C.F.R. § 52.219-9).

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The small business certification is required by FAR § 52.219-1, 48 Fed. Reg. 42,102, 42,523 (1983) (to be codified at 48 C.F.R. § 52.219-1), to be inserted in every solicitation when the contract is to be performed in the United States, its possessions or territories, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Therefore, inclusion of the certification and small business standards in a solicitation does not, by itself, constitute a set-aside for small business. FAR § 19.508(c) and § 52.219-6, 48 Fed. Reg. 42,102, 42,250 and 42,524 (1983) (to be codified at 48 C.F.R. § 19.508(c) and § 52.219-6), require that a solicitation, set aside for small business, contain the phrase "NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE." Nello has not alleged or shown that the IFB contained the small business set-aside notice required by the FAR. Since the procurement has not been set aside for small business, the low bidder, which is not a small business, was eligible for the award.

*for*   
Comptroller General  
of the United States